

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ROBERT ROTH,

Petitioner,

v.

ORDER

08-cv-473-bbc

DR. GLEN HEINZL,

Respondent.

On August 13, 2008, I assessed petitioner Robert Roth an initial partial payment of the \$350 filing fee in the amount of \$.44 and gave him until September 4, 2008, in which to make the payment. Now petitioner has submitted a letter dated August 25, 2008, that I construe as a motion to use release account funds to pay the initial partial payment.

In his motion, petitioner says that he has been unable to comply with the August 13 order because "Institution staff refuse to allow money out of [his] release account." Petitioner should be aware that the language of 28 U.S.C. § 1915(b)(1) suggests that prison officials are required to use a prisoner's release account to satisfy an initial partial payment if no other funds are available, Carter v. Bennett, 399 F. Supp. 2d 936, 936-37 (W.D. Wis. 2005), and the state of Wisconsin has conceded that this provision of the Prison Litigation Reform Act supersedes any restrictions state law imposes on the availability of funds in a prisoner's release

account. Therefore, if sufficient funds do not exist in petitioner's regular account to pay his initial partial payment, he should be allowed to use his release account to pay the remainder of the assessed amount. Accordingly, I will give petitioner additional time in which to make his payment. Petitioner may show this order to the appropriate prison authorities to insure they understand the nature of his disbursement request and the scope of their obligation.

ORDER

IT IS ORDERED that

1. Petitioner's motion to use release account funds (dkt. #5) to pay the initial partial payment he has been assessed in this case is GRANTED.
2. Petitioner may have an enlargement of time to September 25, 2008, in which to submit a check or money order made payable to the clerk of court in the amount of \$.44. If, by September 25, 2008, petitioner fails to pay the initial partial payment or explain his failure to do so, then the clerk of court is

directed to close this file without prejudice to petitioner's filing his case at a later date.

Entered this 4th day of September, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge